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December 16, 1998

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Ms. Magalie Roman Salas
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DEC 16 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: **Ex Parte Presentation**
CC Docket No. 98-147

Dear Ms. Salas:

Attached is a copy of a letter sent to Larry Strickling, Chief, Common Carrier Bureau. Please include it in the record of the above-referenced docket.

Sincerely,

No. of Copies rec'd 012
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John T. Lenahan
Assistant General Counsel

December 16, 1998

Mr. Larry Strickling, Chief
Common Carrier Bureau
Federal Communications Commission
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: **Ex Parte Presentation**
CC Docket No. 98-147

Dear Mr. Strickling:

In a recent meeting, Commission staff solicited Ameritech's view concerning the Commission's authority under section 3(25)(B) of the Communications Act (47 U.S.C. § 153(25)(B)) to revise existing LATA boundaries for limited purposes. Specifically, staff asked whether the Commission can approve a LATA established or modified by a Bell operating company (BOC): (i) only for particular, specified services, and (ii) subject to specific limitations, terms and conditions, including that the changed LATA only applies to such services provided by a corporation that has been established as a separate subsidiary from the BOC.

As discussed below, the Commission plainly has authority to approve new or modified LATA boundaries, even on a nationwide basis, established by a BOC for specific services.¹ Moreover, unlike section 271(d)(4), section 3(25)(B) contains no limit on the Commission's authority to impose reasonable conditions on such changes. Consistent with this broad authority, the Commission could condition its approval of a LATA change for advanced packet-switched data services (for which existing LATA boundaries are ill suited), on BOC compliance with certain market opening conditions

¹ In the Commission's initial Memorandum Opinion and Order, and Notice of Proposed Rulemaking, in this docket, the Commission concluded that it lacked authority to approve a global LATA for advanced data services. *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, FCC 98-188 at 69-82 (rel. Aug. 7, 1998). In reliance on that decision, Ameritech dramatically scaled back its LATA modification proposal. Nevertheless, Ameritech continues to believe that the Commission's initial decision was incorrect, and that broader relief (such as that originally proposed by Ameritech and advocated by Bell Atlantic in its comments and reply comments) is both within the Commission's authority under section 3(25)(B) and necessary for the Commission to fulfill its section 706 mandate to encourage ubiquitous deployment of advanced telecommunications capability.

and a requirement that the BOC provide such services only through a separate data affiliate.

The Commission has recognized that section 3(25)(B) grants it authority to approve modified LATA boundaries only for specific services. In the *Southwestern Bell Telephone Company LATA Modification Order*, the Common Carrier Bureau approved a LATA modification request by Southwestern Bell Telephone Company for the limited purpose of providing ISDN services in the Hearne, Texas LATA using facilities in the Austin LATA. (*Southwestern Bell Telephone Company Petition for Limited Modification of LATA Boundaries to Provide Integrated Services Digital Network (ISDN) at Hearne, Texas*, File No. NSD-LM-97-26, FCC 98-923 at para. 1 (Com. Car. Bur. May 18, 1998)). The Bureau specifically found that "nothing in the statute or legislative history indicates that a LATA may not be modified for a limited purpose (*id.* at para. 11), and held that the LATA boundaries at issue would remain unchanged for all other purposes (*id.* at para. 14).

The Commission has further recognized that it may impose reasonable limits or conditions on its approval of LATA boundary changes under section 3(25)(B). Thus, for example, the Commission authorized numerous LATA changes to provide extended local calling service (ELCS), provided such service was offered on a flat-rated, non-optional basis. (*Petitions for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service (ELCS) at Various Locations*, CC Docket No. 96-159, Memorandum Opinion and Order, 12 FCC Rcd 10646, 10656-57 (1997) (noting that other types of service, including measured, optional, or toll service, between the specified exchanges would be deemed interLATA).)

To date, the Commission has not conditioned any change in LATA boundaries on a separate subsidiary requirement. Nevertheless, Ameritech believes the Commission has authority to impose such a requirement as described in Ameritech's comments and reply comments filed in this proceeding.

In the *US West LATA Boundary Waiver Order*, the Common Carrier Bureau found that section 3(25)(B) explicitly transferred the MFJ Court's authority over the establishment and modification of LATA boundaries to the Commission. (*See U.S. West LATA Boundary Waiver Order*, DA 97-767 para. 16-19 (rel. Apr. 21, 1997).) As a consequence, the Commission's authority to modify LATA boundaries is at least as extensive as that of the Court. And while Ameritech believes that the Commission is not limited by section 3(25)(B) to the types of LATA boundary modifications approved by the MFJ Court, that issue is irrelevant for present purposes because Judge Greene authorized changes in LATA boundaries on a nationwide, multi-state and statewide basis

to permit a BOC to provide specific services (including cellular, cable television, and paging services) efficiently when such changes did not impede competition.² In every case, Judge Greene imposed conditions on such changes in order to safeguard competition, including, in many cases, a requirement that a BOC provide such services only through a separate subsidiary.

For example, shortly before passage of the Telecommunications Act of 1996, Judge Greene authorized a sweeping change in LATA boundaries to permit all of the BOCs to provide cellular and other wireless services throughout the country, provided they complied with certain requirements, including a requirement that they provide such services through a separate affiliate. (*United States v. Western Electric Co.*, No. 82-0192, slip op. (D.D.C. Apr. 28, 1995).) Similarly, Judge Greene authorized a change in LATA boundaries to permit Ameritech to provide paging services statewide in Michigan, and Bell Atlantic to provide such services between Harrisburg, Pennsylvania and Atlantic City, New Jersey, provided they offered such services only through a separate subsidiary. (*United States v. Western Electric Co.*, No. 82-0192 (D.D.C. Jun. 20, 1986), 1986-1 Trade Cases ¶ 67,148.) See also *United States v. Western Electric Co.*, No. 82-0192, slip op. (D.D.C. Feb. 20, 1985) (modifying LATA boundaries to permit Pacific Telesis (PacTel) to provide paging and other wireless services across previous LATA boundaries, provided PacTel provided such services through a separate affiliate); *United States v. Western Electric Co.*, No. 82-0192, slip op. (D.D.C. Jan. 28, 1987) (changing LATA boundaries to permit NYNEX Mobile Communications Company (NMCC) to provide cellular service beyond existing LATA and CGSA boundaries, provided NMCC provides such service only through a corporation separate from the NYNEX operating companies).

Judge Greene also authorized changes in LATA boundaries to permit the BOCs to provide cable television services beyond the LATA boundaries established for traditional voice telephony services, provided such services were provided through a separate affiliate. For example, Judge Greene authorized a change in LATA boundaries to permit Southwestern Bell Corporation (SBC) to provide cable services in the Washington, D.C. metropolitan area on the condition that SBC owned and operated the facilities to provide such services through one or more separate affiliates. (*United States v. Western Electric Co.*, No. 82-0192, slip op. (D.D.C. Sept. 21, 1993).) Likewise, the court authorized US West to provide various transmission and other services associated with its provision of

² The fact that Judge Greene authorized such changes through MFJ waivers – as opposed to LATA modifications – is without significance. As discussed in Ameritech's reply comments (at 50), all of the LATA changes approved by the MFJ Court, including those involving ELCS, were presented as MFJ waivers. In those cases, the court essentially modified LATA boundaries, but characterized such changes as waivers because the decree did not provide for "modifications." Even the Commission has recognized that there is no substantive difference between a LATA "waiver" (as such changes were styled by the MFJ court) and a LATA "modification" under section 3(25)(B). Thus, it treated a request by Southwestern Bell for a LATA boundary waiver as a request for a LATA boundary modification. See *Commission Seeks Comment on Petitions for Waiver of LATA Boundaries to Provide Expanded Local Calling Service in Texas and North Carolina*, Public Notice, DA 97-109 (Net. Serv. Div. Rel. Jan. 15, 1997).

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cable television services across all LATA boundaries outside its region on the condition that US West provided such services only through Time Warner Entertainment Company, L.P. – a structurally separate affiliate of US West. (*United States v. Western Electric Co.*, slip op. (D.D.C. Oct. 24, 1994).) *See also*, *Western Electric Co.*, slip op. (D.D.C. Sept. 20, 1994) (authorizing PacTel to provide cable television service utilizing interLATA distribution facilities, provided that PacTel owned and operated such facilities only through a separate affiliate).

Thus, while the Commission's authority to modify LATA boundaries is not limited by MFJ precedent, it surely has authority to condition a change in LATA boundaries to permit a BOC to provide a specific service on a competitive basis on the BOC's compliance with competitive safeguards, including a requirement that the BOC provide the service only through a separate affiliate.

Yours sincerely,



John T. Lenahan

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